

Resolution No.: 03-02-11
Introduced: 3/14/2011
Adopted: _____
Effective Date: _____

BOARD OF MANAGERS

For

Chevy Chase Village, MD

SUBJECT: AN ORDINANCE TO AMEND CHAPTER 8 OF THE CHEVY CHASE VILLAGE CODE TO PROHIBIT THE DEVOTION TO PRIVATE USE OF UNIMPROVED RIGHTS-OF-WAY.

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality; to protect and preserve the municipality's rights, property and privileges; to preserve peace and good order; to secure persons and property from danger and destruction; and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 77-14 of the Chevy Chase Village Charter authorizes the Board of Managers to pass ordinances as it may deem necessary for the health, safety and welfare of Chevy Chase Village; for the protection and preservation of Chevy Chase Village property, rights and privileges; for the preservation of peace and good order; and for the suppression and abatement of all nuisances; and

WHEREAS, under Maryland law, the Village holds public rights-of-way in trust for the public; and

WHEREAS, after proper notice to the public, the Board of Managers conducted a public hearing at which it considered the following ordinance in public session assembled on the ____ day of _____, 2011; and

WHEREAS, subject to certain limitations and restrictions, the Village currently allows the owners of property abutting a public right-of-way to devote to private use the portion of the public right-of-way between the sidewalk, or in the absence of a sidewalk, the paved roadway, and the abutting property, provided that for improvements other than grass or ground cover the abutting owner is required to execute a written revocable license to use the public right-of-way setting forth the terms of such private use; and

WHEREAS, the Board of Managers finds that it would be contrary to the public interest to allow the owners of abutting property to devote to private use any portion of a public right-of-way that is not improved with a sidewalk or paved roadway, and

WHEREAS, the Board of Managers finds that the Village Code should be amended to clarify and codify the prohibition against private use of the public right-of-way in such cases; and

WHEREAS, the Board of Managers finds that allowing the owners of abutting property to devote to private use a portion of an unimproved right-of-way could result in damage to trees and public improvements located or to be located within the public right-of-way and would interfere with the Village's ability to maintain the public right-of-way for the benefit of the public; and

WHEREAS, the Board of Managers finds that the ordinance as hereinafter set forth is

necessary to assure the good government of the Village; for the protection and preservation of the Village's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, comfort, and convenience of the residents of the Village.

NOW, THEREFORE, the Board of Managers of Chevy Chase Village does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 8 OF THE CHEVY CHASE VILLAGE CODE TO PROHIBIT THE DEVOTION TO PRIVATE USE OF UNIMPROVED RIGHTS-OF-WAY.

SECTION 1. BE IT ORDAINED AND ORDERED, this ____ day of _____, 2011, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code and Section 77-14 of the Village Charter, that Section 8-27 of the Village Code is hereby amended to read as follows:

Sec. 8-27. Maintenance of public right-of-way devoted to private use.

The public property located between public sidewalks and abutting private property (or in the absence of public sidewalks, located between the **[public streets] paved roadways** and abutting private property) **[known as the public right-of-way, which is devoted to private use by an] where such public property is under the immediate care and keeping by an** abutting property owner or occupant, shall be **considered to be public right-of-way devoted to private use. [under the immediate care and keeping of such abutting property owner or occupant]** The Village, by this Chapter, grants to abutting property owners or occupants so using the public right-of-way a license to continue to use the public right-of-way, **subject to the provisions of Section 8-31**; provided that this license may be revoked at any time by the Village in accordance with the provision of this Chapter. **In no case shall any part of any unimproved public right-of-way (a right-of-way which has not been improved with a paved roadway) be considered to be a public right-of-way devoted to private use, and no license to use such right of way shall be implied and no license may be issued by the Board of Managers or the Village Manager.**

Notwithstanding the forgoing, any written license to devote public property to private executed prior to _____, 2011 issued by the Board of Managers or the Village Manager shall not be revoked by the adoption of this Ordinance and shall remain in effect as issued until revoked or modified in accordance with terms of said license.

(9-13-93; No. 00-00-11, 00-00-11)

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, 2011, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code and Section 77-14(a) of the Village Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ____ day of _____, 2011, provided the same is posted at the Village Office for fourteen (14) days prior thereto.

CHEVY CHASE VILLAGE

David L. Winstead, Chairman
Board of Managers
Chevy Chase Village

ATTEST:

Peter M. Yeo, Secretary

Bold and Underline indicates new material

[Bold brackets] indicates material deleted

* * * indicates material unchanged